

AMENDED IN SENATE APRIL 5, 2000

AMENDED IN SENATE MARCH 15, 2000

SENATE BILL

No. 1327

Introduced by Senator Escutia

(Coauthors: Senators Burton, Hughes, and Sher)

(Coauthors: Assembly Members Alquist, Aroner, Cedillo, Correa, Firebaugh, Keeley, Knox, Kuehl, Nakano, Reyes, Shelley, Vincent, and Washington)

January 3, 2000

An act to amend Section 1198.5 of the Labor Code, relating to inspection of personnel files.

LEGISLATIVE COUNSEL'S DIGEST

SB 1327, as amended, Escutia. Employees: inspection of personnel records by employees.

Existing law requires employers to make employee personnel files available for inspection by employees, as specified. Existing law exempts the state, school districts, and public employers, as specified, from this requirement.

This bill would delete the exemptions for the state and public employers, *but would specifically exempt county sheriff's departments and municipal police departments with respect to their employees*. The bill would also require employers to permit their employees to inspect their personnel files or a copy at the place the employee reports to work, during usual business hours, with no loss of compensation. The bill would require that the personnel files be kept confidential and that access to the files be restricted

to the employee, *employee's representative*, and authorized personnel of the employer.

The bill would specify a procedure by which employees may request corrections and deletions of material in their personnel files that is not accurate, relevant, timely, or complete and would require employers, within 21 calendar days of receiving the request, to either make the requested changes or place a written explanation of the reasons for not granting the request in the employee's personnel file. The bill would require employers to remove, upon discovery, adverse material from an employee's personnel file, subject to certain exceptions, that has not been used within 2 years of the placement of the material in the file as part of an official act of discipline of the employee.

The bill would authorize institutions of higher education, notwithstanding these provisions, to provide academic employees access to academic peer review records in a form that does not reveal the identities of the reviewers.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1198.5 of the Labor Code is
- 2 amended to read:
- 3 1198.5. (a) Every employer shall at reasonable times,
- 4 and at reasonable intervals as determined by the Labor
- 5 Commissioner, upon the request of an employee, permit
- 6 that employee to inspect personnel files that are used or
- 7 have been used to determine that employee's
- 8 qualifications for employment, promotion, additional
- 9 compensation, or termination or other disciplinary
- 10 action.
- 11 (b) Each employer subject to this section shall keep
- 12 each employee's personnel file or a true and correct copy
- 13 thereof at the place the employee reports to work, or shall
- 14 make the file available at that place within a reasonable
- 15 period of time after a request therefor by the employee.
- 16 An employer shall, at the request of an employee thereof,
- 17 permit the employee to inspect the employee's personnel



1 file or copy during usual business hours, with no loss of
2 compensation to the employee. All personnel files shall be
3 kept confidential and shall not be accessible to anyone
4 other than the employee, *employee's representative*, and
5 authorized personnel of the employer.

6 (c) If, after examination of the employee's personnel
7 file or copy, the employee has reason to believe that any
8 portion of the material is not accurate, relevant, timely,
9 or complete, the employee may request in writing that
10 the record be corrected, or that the inaccurate portion be
11 deleted, or both. Any request made pursuant to this
12 subdivision shall include a statement by the employee
13 describing the corrections or deletions from the
14 personnel file requested and the reasons supporting those
15 corrections or deletions. A statement submitted pursuant
16 to this subdivision shall become part of the personnel file
17 of the employee.

18 (d) Within 21 calendar days of receipt of a request
19 made pursuant to subdivision (c), the employer shall
20 either grant the employee's request or notify the
21 employee of the decision to refuse to grant the request.
22 If the employer refuses to grant the request, the
23 employer shall state in writing the reasons for refusing the
24 request and that written statement shall become part of
25 the personnel file of the employee.

26 (e) This section does not apply to the records of an
27 employee relating to the investigation of a possible
28 criminal offense. This section does not apply to letters of
29 reference. Institutions of higher education may provide
30 academic employees access to academic peer review
31 records in a form that does not reveal the identities of the
32 reviewers.

33 (f) If an employer has established an independent
34 employee relations board or commission, any matter or
35 dispute pertaining to this section shall be under the
36 jurisdiction of that board or commission, but an employee
37 shall not be prohibited from pursuing any available
38 judicial remedy, whether or not relief has first been
39 sought from a board or commission.

1 (g) Nothing in this section shall be construed to limit
2 the rights of employees pursuant to Section 31011 of the
3 Government Code or Section 44031 or 87031 of the
4 Education Code, or to provide access by a public safety
5 employee to confidential preemployment information.
6 This section shall not apply to public school districts with
7 respect to employees covered by Section 44031 of the
8 Education Code. *This section shall also not apply to a*
9 *county sheriff's department or a municipal police*
10 *department with respect to its employees.*

11 (h) Employers shall remove, upon discovery, all
12 adverse reports, documents, correspondence, or other
13 material placed in the personnel file of an employee that
14 has not been used within two years of that placement
15 within the file as part of an official act of discipline of the
16 employee. Once that material has been used as part of an
17 official act of discipline of the employee, it may only be
18 removed from the employee's personnel file pursuant to
19 subdivisions (c) and (d). This subdivision shall not apply
20 to performance evaluations, payroll administration
21 documents, employment applications, and any related
22 materials.

